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Subject: RE: Scanned Doc

I coordinated the issue you raised regarding eligibility for the First Time Homebuyer's credit with the Subject Matter Experts in . Their advice is reproduced below. Please let me know if you have any questions or if we have misconstrued any of the facts.

Thanks.

Here are the facts as we understand them. The taxpayer's residence was destroyed by a fire on . On that date, the (destroyed) home ceased to be the taxpayer's principal residence.

In the latter part of 2008, the taxpayer began construction of a new home on the same property on which the destroyed home used to be located. The taxpayer occupied this new home on .

During the period of through , the taxpayer lived with his girlfriend, and sometimes at the homes of relatives and other friends. When the taxpayer began construction of the new residence in late 2008, he also lived in a storage shed / dwelling unit on the property where he was constructing his new home. The storage shed had a stove, refrigerator, bathroom, sleeping apparatus, and heat.

The taxpayer spent about 40% of his time in the storage shed / dwelling unit, and most of the rest of the 60% of his time living with his girlfriend.

Based on those facts, the storage shed / dwelling unit is a residence for purposes of section 121. Under Reg. section 1.121-1(e)(2), the term dwelling unit has the same meaning in section 280A(f)(1). Under Reg. section 1.280A-1, a dwelling unit includes a house, apartment, condominium, mobile home, boat, or similar property, which provides basic living accommodations such as sleeping space, toilet, and cooking facilities.

Although the storage shed / dwelling unit is a residence, it is not the taxpayer's principal residence because he did not spend the majority of his time there. Reg. section 1.121-1(b) provides, in part, that if a taxpayer alternates between two properties, using each

as a residence for successive periods of time, the property that the taxpayer uses a majority of the time during the year ordinarily will be considered the taxpayer's principal residence.

Therefore, the taxpayer meets the definition of a first-time homebuyer because he has not owned a principal residence within the three years prior to the date of purchase of the new home (here, the occupancy date). In this case, the taxpayer may only include the cost of construction of the new home in calculating the credit.